BAIL — LIABILITY TO ANSWER CHARGES NOT NAMED IN BAIL BOND. — The plaintiff as surety entered into a recognizance with a party committed for trial on a charge of indecent assault. The condition of the bond was that the accused should appear and plead "to such indictment as may be found against him by the grand jury for and in respect to the charge aforesaid . . . and should not depart the court without leave." An indictment for rape was returned by the grand jury. The accused failed to appear. The plaintiff moved to set aside an order authorizing the estreat of the recognizance. *Held*, that the motion be dismissed. *The King* v. *Mandacos*, 50 D. L. R. 427 (Nova Scotia).

Some courts consider the bail bound only when an indictment is returned charging the crime named in the recognizance. *Queen* v. *Wheeler*, 1 CAN. L. JOUR. (N. S.) 272; *Queen* v. *Ritchie*, 1 CAN. L. JOUR. (N. S.) 272. Others regard the recognizance as effecting a substitution of the bail for the jailer, and hold him, although the indictment be based on a different act from that underlying the recognizance. *Pernitti* v. *People*, 99 App. Div. 391, 91 N. Y. Supp. 210. See 18 HARV. L. REV. 539. A sound intermediate rule prevails, however. This rightly accords independent effect to the undertaking that the accused shall not depart the court without leave, but confines its application to appearances in proceedings connected with the criminal act for which he was committed. Thus, though no indictment be returned, or a *nolle prosequi* be entered, the bail remains bound until the accused is formally discharged. *State* v. *Stout*, 11 N. J. L. 124; *Silvers* v. *State*, 59 N. J. L. 428, 37 Atl. 133. See also *State* v. *Hancock*, 54 N. J. L. 393, 24 Atl. 726. The crimes named in the recognizance and indictment must arise out of the same transaction, if the former is to continue effective. *State* v. *Brown*, 16 Iowa, 314; *Carson* v. *Brown*, 142 Ga. 667, 83 S. E. 523. But if, as in the instant case, the offenses are merely different degrees of the same crime, the bail remains bound though the indictment charges the graver crime. *State* v. *Bryant*, 55 Iowa, 451, 8 N. W. 303. See *Gresham* v. *State*, 48 Ala. 625, 627. *A fortiori*, where the indictment is for the lesser offense. *Campbell* v. *State*, 18 Ind. 375; *Comm.* v. *Teevens*, 143 Mass. 210, 9 N. E. 524.

BANKS AND BANKING — DEPOSITS — CREATION OF RELATION OF BANK AND DEPOSITOR. — The plaintiff by mistake sent funds to the defendant bank for deposit. There was no agreement between the plaintiff and the bank creating the relation of bank and depositor. Subsequently, the bank failed to honor the checks of the plaintiff. *Held*, that the bank is not liable. *Rimes & Stubbs* v. *National Bank of Savannah*, 101 S. E. 315 (Ga.).

A bank is under no general duty to receive funds offered for deposit. *Thatcher* v. *The Bank of the State of N. Y.*, 5 Sandf. (N. Y.) 121. See *Jaselli* v. *Riggs Nat. Bank*, 36 App. Cas. (D. C.) 159, 168; *Elliott* v. *Capital City State Bank*, 128 Iowa, 275, 277, 103 N. W. 777, 778. Similarly, the relation of bank and depositor cannot be created without the consent of the owner of the funds deposited. *Patek* v. *Patek*, 166 Mich. 446, 131 N. W. 1101. See *Winslow* v. *Harriman Iron Co.*, 42 S. W. (Tenn. Ch. App.) 698, 700. These propositions show clearly that the relation is essentially contractual in its nature. *Wilson* v. *First Nat. Bank*, 176 Mo. App. 73, 162 S. W. 1047; *First Nat. Bank of Allentown* v. *Williams*, 100 Pa. St. 123. See 1 MORSE, BANKS AND BANKING, 5 ed., § 178. Under the facts in the principal case, the existence of such a contract does not appear, for there is no evidence of assent by the bank. And in the absence of such a contract there is no duty to honor checks, for this is merely an incident of the relation of bank and depositor. *Citizen's Nat. Bank* v. *Importers & Traders Nat. Bank*, 119 N. Y. 195, 23 N. E. 540. See *National Mahaiwe Bank* v. *Peck*, 127 Mass. 298, 300. The only basis for liability on the part of the bank, in the absence of an express contract, would be such conduct